



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

following instruction: "A man upon his own premises when attacked is under no duty to retreat but may resist the aggressor and in so doing may use such force as appears to him as a prudent man as reasonably necessary to repel the attack and to subdue the aggressor or compel him to leave the premises." *Held*, the rejection of the instruction was proper, as the rule that necessary force may be used to protect property is modified by the rule that no one can endanger human life in defending property except in extreme cases, and that the taking of human life is not justified merely to subdue the intruder or compel him to leave the premises. *Fortune v. Commonwealth* (Va., 1922), 112 S. E. 861.

"Life is too valuable to be sacrificed for the protection of property. Rather than slay the aggressor to prevent a mere trespass, he [the land owner] should yield and appeal to the courts for redress." *Carpenter v. State*, 62 Ark. 286. A man may not kill to get rid of a persistent, noisy trespasser. *State v. Horskin*, Delaware Crim. Rep. (Houston) 116; *Patten v. People*, 18 Mich. 313. If a man kicks an intruder to eject him and death ensues, he is guilty of homicide. *Wild's Case*, 2 Lewin's Cr. Cases, 214. The rule applies to personal as well as real property. *People v. Capello*, 282 Ill. 542; *Stacey v. Commonwealth*, 189 Ky. 402. But some deaths resulting from attempts to protect property are justifiable. A man may defend his property with any necessary force short of taking life or doing great bodily harm. *Roach v. The People*, 77 Ill. 25; *Commonwealth v. Power*, 7 Metc. (Mass.) 596; *State v. Johnson*, 12 Ala. 840; *Burnham v. Stone*, 101 Cal. 164. His duty to retreat to the last ditch does not extend to his own land. *Brinkley v. State*, 89 Ala. 34. He there has a right to stand his ground, though there is a less dangerous alternative. *Estep v. Commonwealth*, 86 Ky. 39. It therefore may result that because a defendant has endangered his own life through milder attempts at expulsion he is forced to kill in self-defense or because he has reasonable grounds to believe his life is in danger. In such cases he is exonerated. *Alberty v. United States*, 162 U. S. 499. It is a corollary that under such circumstances as these he is justified in using deadly weapons and is not liable to punishment for offenses of a lower grade than murder. *People v. Dann*, 53 Mich. 490; *State v. Taylor*, 82 N. C. 554. If any other felony besides his own death is threatened he is justified in killing to prevent it unless there is a more peaceful alternative. *McPherson v. State*, 22 Ga. 478. As the instruction asked for failed to state that a felony or self-defense was involved, the court's action was clearly right on principle and authority.

CRIMES—HOMICIDE—SELF-DEFENSE—DUTY TO RETREAT.—Defendant was indicted for murder, and at the trial it appeared that he and deceased were playing cards in a room in the Elks' Club, of which the defendant was a member. The parties became involved in a personal difficulty and the deceased struck defendant with a chair and was in the act of striking him again when defendant fired the fatal shot. *Held*, that defendant was not bound to retreat when attacked in a room of the club of which he was a member. *State v. Marlowe* (S. C., 1922), 112 S. E. 921.

Many courts have abandoned the "duty to retreat" doctrine, so the question of when there is a duty to retreat arises only in those jurisdictions which still retain this common law doctrine. The court in the principal case takes the view that because the law of retreat in self-defense has no application where one is on his own premises it does not apply to a club member when attacked by another in the club rooms. The rule is practically universal that when a person is attacked in his own dwelling he is not required to retreat, upon the theory that a man's home is his castle and that he has a right to protect it and those within it from intrusion and attack. *Jones v. State*, 76 Ala. 8; *People v. Newcomer*, 118 Cal. 263; *State v. Patterson*, 45 Vt. 308; 21 Cyc. 823. While the courts are agreed upon the general rule, there has been some difference of authority respecting the extent of premises that may be defended without retreat. *Lee v. State*, 92 Ala. 15; *Babe Beard v. U. S.*, 158 U. S. 550; *State v. Brooks*, 79 S. C. 144. It has been held that one has the same right to defend his place of business against intrusion as he has to defend his dwelling. *Foster v. Territory*, 6 Ariz. 240; *Tingle v. Com.* (Ky.), 11 S. W. 812; *Bean v. State*, 25 Tex. App. 346. So it has been held that a room rented and occupied as a bedroom is a dwelling-house within this rule. *Harris v. State*, 96 Ala. 24. But this seems to be as far as the courts have gone, and therefore the court in the principal case took a very long step in extending the rule to club rooms. The decision can be justified under the doctrine laid down in *Runyan v. State*, 57 Ind. 80, that "when a person, being without fault and in a place where he has a right to be, is violently assaulted, he may, without retreating, repel force by force, and if, in the reasonable exercise of the right of self-defense, his assailant is killed, he is justifiable." *Miller v. State*, 74 Ind. 1; *State v. Carter*, 15 Wash. 121; see also *Ford's Case*, Kelyng C. C. 51. About all that can be said of the American cases in general is that, while the common law view is still regarded as orthodox, "The tendency of the American mind seems very strongly against the enforcement of any rule which requires a person to flee when assailed." 11 MICH. L. REV. 254. See also 29 HARV. L. REV. 544.

DESCENT AND DISTRIBUTION—RELEASE OF EXPECTANT ESTATE BY ONLY CHILD AND SOLE HEIR.—A daughter executed an instrument acknowledging receipt of a sum of money from her father as an advancement in full of her share in his estate. The father died intestate leaving no wife or other children. *Held*, the daughter is entitled to the estate as against the claim of intestate's brothers and sisters. *Pylant v. Burns* (Ga., 1922), 112 S. E. 455.

Such a release is generally held to bar the heir. *Felton v. Brown*, 102 Ark. 658; *In re Simon's Estate*, 158 Mich. 256; *Hickey v. Davidson*, 129 Iowa 384; *Simpson v. Simpson*, 114 Ill. 603. The instant case expressly approves this rule, but refuses to apply it where the result is to disinherit an heir in favor of more remote heirs and distributees. The decision rests upon two grounds. One is the wording of the Georgia statute; the other is the conclusion of the court that disinheritance of a sole heir would be an unreasonable construction of the release. The doctrine of advancements is justifiable mainly as a means of securing equality between children, and the court is